

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

727U0701

HOUSE JUDICIARY ENGROSSED NO. **HB 1226** 02/15/2013

Introduced by: Representatives Stevens, Feinstein, Hajek, Hunhoff (Bernie), Johns, Mickelson, Russell, and Schoenfish and Senators Lederman and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide remedies for assets omitted from the division of
2 property in the entry of a divorce decree.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any court that has entered an original decree of marital annulment, dissolution, or legal
7 separation and determined a division of the property shall reopen the case upon the motion of
8 either party to the original decree if the moving party alleges all of the following regarding any
9 assets belonging to either or both of the parties:

- 10 (1) The assets existed at the time of the entry of the decree;
11 (2) The assets were not encompassed by the original decree; and
12 (3) The assets are currently more than de minimus assets.

13 Section 2. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
14 follows:



1 If the court finds the assets were inadvertently omitted from the division of property, the
2 court shall make an equitable division of the omitted assets. The court shall make an equitable
3 division of the omitted assets, whether the titles to the assets are in the name of the husband or
4 the wife. The court shall consider equity, the circumstances of the parties at the time of the
5 original decree, and the circumstances of the parties when a motion for omitted assets is filed.

6 Section 3. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If the court finds the omitted assets were intentionally concealed by the nonmoving party
9 or the nonmoving party's agent, the court may order an equitable division of the omitted assets'
10 appreciated value, a forfeiture of the omitted assets to the moving party, or any other appropriate
11 distribution. In addition, the court may award either compensatory damages or punitive
12 damages, or both, to the moving party.

13 Section 4. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The court may award attorney fees for a motion for inadvertently omitted assets filed
16 pursuant to this Act. The court shall award attorney fees to the moving party if the court finds
17 the omitted assets were intentionally concealed by the nonmoving party or the nonmoving
18 party's agent.

19 Section 5. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any court of this state that has entered an original decree of marital annulment, dissolution,
22 or legal separation and determined the division of property has exclusive, continuing jurisdiction
23 over the subsequent motions for omitted assets unless the court that entered the original decree
24 determines a court of another state is a more convenient forum.

1 Section 6. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A court of this state may adjudicate a motion for omitted assets when a court of another state
4 entered the original decree of marital annulment, dissolution, or legal separation and determined
5 the division of property only if the court of the other state that entered the original decree
6 determines it does not have exclusive, continuing jurisdiction or determines a court of this state
7 is a more convenient forum. However, if the omitted asset is real property that lies in this state,
8 a court of this state may adjudicate a motion for omitted assets regardless of whether a court of
9 another state entered the original decree.

10 Section 7. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 A motion for omitted assets alleging inadvertent omission of assets must be filed within two
13 years after the date of discovery of the omission, but no later than three years after the entry of
14 the original decree.

15 Section 8. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A motion for omitted assets alleging intentional concealment of assets must be filed within
18 two years after the date of discovery of the omission, but no later than ten years after the entry
19 of the original decree.

20 Section 9. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The provisions of this Act are not intended to be exclusive remedies and do not preclude the
23 use of any other criminal or civil remedy.